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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1000

NOBLE DRILLING CORPORATION, ET AL,
Petitioners,

versus

VERSIE KIMBLE,
Respondent.

Brief In Opposition To Petitioners' Application For Writ Of Certiorari

BRIEF SUBMITTED ON BEHALF OF VERSIE KIMBLE, RESPONDENT

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The opinion of the United States Court of Appeals for the Fifth Circuit, No. 26357, is unreported as of this date; it is reprinted in full as Appendix "A" of Petitioners' application for a writ of certiorari.

QUESTIONS PRESENTED

I

Whether there is any evidence to support the Respondent's claim that he was a member of a crew of a vessel and accordingly entitled to bring suit under the Jones Act, 46 U.S.C.A. 688.

II

Whether the owner of a vessel is liable under the warranty of seaworthiness for accidents caused by lack of proper tools and equipment necessary to perform the mission of that vessel.

STATEMENT OF THE CASE

Respondent, Versie Kimble, brought this suit against his immediate employer, Noble Drilling Corporation, on two separate and distinct accidents. Claiming in each of them that he was a seaman within the meaning of the Jones Act, 46 U.S.C.A. 688 et sequitur. He also sued Chevron Oil Company in each of the cases under the General Maritime Law. In each case, Chevron Oil Company owned a stationary offshore drilling platform and a drilling tender drilling for oil in the Gulf of Mexico. All operations were conducted from the drilling tender, it serving as a supply, quarter, communication, power and command center for the actual drilling of the oil wells from the platforms. Without the drilling tender and its operation, the platforms could not be operated for drilling oil wells. All per-

sonnel were assigned to the drilling tender, upon which they lived and from which the entire operation was conducted. Chevron, who owned the offshore lease, the platform and the tender and for whom the entire operation was being conducted, had a few direct employees including the master and engineer on the drilling tender, but by and large the balance of the labor for this operation was done through subcontractors. For instance, the preparation and serving of food for all personnel was performed by one subcontractor while another subcontractor performed the roustabout work and still another, Noble Drilling Corporation, employed the actual drilling crews and furnished some of the drilling equipment. Kimble's position was that Chevron Oil Company could not avoid its basic shipowner obligations simply by inserting a subcontract relationship between it and the employees.

In the first accident there was evidence to support the conclusion that the tender was not properly equipped since Kimble's injury was directly related to a defective wrench and the failure of the drilling tender to have replaceable jaws for it. In that case the jury found negligence on the part of Noble Drilling Corporation under the Jones Act and also found Chevron Oil Company liable. They found the plaintiff guilty of negligence which contributed to the accident to the extent of 33⅓%. In the second accident, Chevron Oil Company was not found to be liable nor was the plaintiff found to be guilty of contributory negligence. A judgment was rendered against Noble Drilling Corporation on both claims and against Chevron Oil Com-

pany on the first accident, the one involving the defective wrench.

Petitioners appealed to the Fifth Circuit which affirmed the judgment on all counts and now Petitioners seek writs of certiorari from this court.

ARGUMENT

MAY IT PLEASE THE COURT:

Chevron Oil Company Liability

(a) Petitioners in their petition for writs seek to make a point of the Fifth Circuit's statement (see footnote 1, Appendix "A", page 19 Petitioners' application) to the effect that Kimble's theory of recovery from Chevron is not exactly clear. In answer, we wish to point out the following. There is no question that the drilling tender involved was a vessel. There is no question that the defendant, Chevron, owned that vessel. There is substantial evidence that the vessel failed to carry and to have in its supply room, replacement jaws for a 24" Stillson wrench and that was one of the substantial causes of Kimble's first accident. The purpose of the drilling tender was to conduct a drilling operation for which these wrenches with their replaceable jaws were a minimum requirement for safe operations. Under the General Maritime Law the owner of a vessel owes a duty of seaworthiness. When the Fifth Circuit stated that Chevron's liability rested upon the jury's findings that Kimble was a seaman, it was correct. Kimble's status as a seaman assigned to

Chevron's vessel which Chevron was operating, clearly entitles him to the warranty of seaworthiness. Therefore, Chevron could not delegate the obligation to furnish a seaworthy vessel to any subcontractor such as Noble Drilling Corporation, Kimble's immediate employer.

The doctrine of seaworthiness is not confined to seamen who perform a ship service under immediate hire to the owner but extends to those who render the service with the owner's consent or by his arrangement. The obligation of seaworthiness is peculiarly and exclusively the obligation of a shipowner and is one he cannot delegate or contract away as to any workmen within the scope of its policy. *Seas' Shipping Co. vs. Sieracki*, 66 S.Ct. 872, 328 U.S. 85, 90 L.Ed. 1099.

The fact that the defective wrench was part of the equipment furnished by virtue of a contract between the shipowner and Noble is no bar to Kimble's claim that its defectiveness breached the warranty of seaworthiness owed him by Chevron. In *Petterson v. Alaska Steamship Co., Inc.*, 205 F.2d 478, affirmed by the Supreme Court in a per curiam, *Alaska Steamship Co., Inc. vs. John O. Petterson*, 347 U.S. 396, 98 L.Ed. 798, 74 S.Ct. 601, the court held that an unseaworthy block brought aboard by an independent contractor, renders the vessel unseaworthy so that the shipowner is liable to the longshoreman who was injured as a result of the defective block.

The petitioner's claim, that, in order for Kimble to recover under Maritime Law against Chevron Oil

Company, the shipowner, he must have been injured on the vessel, is incorrect. A shipowner's warranty of seaworthiness, where applicable, is not dependent upon the injured party being aboard the vessel. *Gutierrez vs. Waterman Steamship Corp.*, 373 U.S. 206, 10 L.Ed. 2d 297, 83 S.Ct. 1185. In *Gutierrez*, the court stated:

> "The question is one of first impression although other federal courts have already recognized that case law compels this conclusion. *Strika v. Netherlands Ministry of Traffic*, 185 F.2d 555. * * * In *Strika*, while the longshoreman was working on the dock, use of improper wire cable caused a hatch cover to fall on him. * * * The court held that the tort of unseaworthiness arises out of a maritime status or relation and is therefore 'cognible by the maritime (subsidy) law whether it arises on sea or on land.'"
>
> "* * * We agree with this rendering of the case law and hold that the duty to provide a seaworthy sling and gear, including cargo containers, applies to longshoremen unloading a ship whether they are standing aboard ship or on the pier." 10 L.Ed. 2d 303.

In quoting with apparent approval from *Strika*, Supra, the court obviously considered the following language from *Strika* appropriate:

> "* * * Although we have been unable to find a decision holding that a seaman, injured ashore

> by unseaworthy ship's gear, can recover, we have no doubt that he could; and, if a seaman can, we see no reason to question the ability of a longshoreman also to recover, for that follows from the reasoning of *Seas' Shipping Co. vs. Sieracki*, Supra, especially when it is ...ad with the opinion in *Swanson vs. Marra* ..., *Inc.*, 90 L.Ed. 1045, 66 S.Ct. 869, 381 U.S. 1."

The Su... ne Court in *Gutierrez*, Supra, was further impressed ... h the extension of admiralty jurisdiction act, 62, S... te 496, 46 U.S.C. Section 740, as sweeping away any ... ts that a vessel would be liable for damages or inju... and not withstanding that such damages or injury ...d notwithstanding that such

The fact that Chevron ...ose to conduct this operation through the use of su... ntractors can be of little solace to them in view of the ...ding in *Reed vs. Yaka*, 373 U.S. 410, 83 S.Ct. 1349, 10 ...Ed. 2d 448, wherein this court held that a shipowne... obligation of seaworthiness cannot be shifted about, ...ted, or escaped by contracts or by the absence of ...ntracts; it is rooted, not in contracts, but in the h... ds of the work.

The Petitioners are trying to make a point o... dri-gue *vs. Aetna Casualty & Surety Company*, 37 ... W Week 4505, 89 S.Ct. 1835, 23 L.Ed. 2d 360. *Rodrigue*, ... decided long after this case was tried and this case wa... tried during a period when the jurisprudence indicated that the General Maritime Law of tort would apply to the owners of these platforms and, likewise,

the law of contributory negligence would be determined under maritime principles. Therefore a finding of contributory negligence would not bar recovery but merely mitigate it. The jury in this case was charged on those Maritime principles of law and not on the principles which are now thought to apply because of *Rodrigue*, Supra. If the *Rodrigue* decision is applied retroactively and it would be determined that the only basis for the Kimble's recovery against Chevron would be by the application of state law as *Rodrigue* is advanced to have held, then the case would have to be retried and the jury properly charged on that point. However, it seems clear that there is amply room for Kimble's recovery from Chevron under the warranty of seaworthiness as established by the General Maritime Law.

Kimble's Jones Act Status

It is regrettable that we must point out a clear departure from the facts in the Petitioners' statement of the case. On page 4 of the application for writs, the Petitioners' state:

> "The purpose of the Noble personnel at the drilling cites was to operate the drilling and completion rigs located on the fixed structures. *They did not perform any work on the tenders except that one of the Noble men from time to time would go on to the tenders to operate one of Noble's mud pumps located thereon.*" (Emphasis supplied)

In the interest of accuracy, we must bring to this court's attention the findings of the Fifth Circuit with respect to whether or not Kimble's duties required them to work on the tender. The Fifth Circuit stated:

> "As a driller, Kimble was in charge of one of the four-man crews that worked in alternating shifts on the platform. Thus he did most of his work on the platform, but there is considerable evidence in the record to support Kimble's claim that he also had substantial duties on board the tender. In particular, he had responsibility for making sure that the drilling mud, which was pumped from the mud room on the vessel, was properly mixed. As ancillary duties, therefore, he was charged with maintenance of the mud room equipment and mud pumps, with training and supervising his crew, with maintaining pipes, and with helping in connecting and disconnecting lines from the vessel to the platform when the vessel was moved. Moreover, his activities were always closely related to activity on the vessel, which served as a supply, personnel, equipment, fuel and command center for the entire drilling operation. A part of the reason for his first injury, for example, seems to have been the absence of necessary tools, which he had sent a member of his crew to fetch from the tool room on the vessel. * * *"
>
> "Kimble was assigned a permanent room on board the vessel; he ate and slept aboard.

> While on board he was subject to the discipline of the master of the ship and underwent many of the same hazards of the sea to which other members of the crew were subjected. There is even some evidence that he was required on occasion to perform tasks that a more traditional blue-water seaman might be expected to perform, although these were probably rare."

As to his second injury the Fifth Circuit stated:

> "At the time of Kimble's second injury * * * his responsibilities with respect to the mud operation were somewhat reduced. But numerous incidents of the relation of his employment to the vessel remained."

The Fifth Circuit succinctly set the status issue at rest in the following statement:

> "The case at bar clearly falls within the province of the jury because (1) there is undoubtedly some evidence that Kimble was assigned permanently to the vessel tending the platform on which he worked in each instance and (2) there is ample evidence that the duties Kimble performed contributed to the function and mission of the tender, since its sole reason for existence was to support the platform in drilling for oil."

It would be difficult to imagine a more firmly grounded and logical holding than the Fifth Circuit arrived at and expressed by the above phraseology. It was a jury decision and the jury had ample evidence to decide the case in the way which it did. The Fifth Circuit's function was simply to determine whether or not there was a jury case and it did, properly, determine that there was sufficient evidence upon which the jury could properly have reached the decision that it did.

The Petitioners make the specious argument that the Jones Act was never intended to apply to claimants who were injured on stationary platforms, and that the Supreme Court affirmed such a proposition in the *Rodrigue vs. Aetna Casualty & Surety Company*, 37 Law Week, 4505, 89 S.Ct. 1835, 23 L.Ed. 2d 360, case. This is an erroneous statement for many reasons, among them being the fact that the question of the Jones Act status was not an issue in the *Rodrigue* case and another being that the *Rodrigue* decision simply held that the stationary platforms are to be treated as islands belonging to the adjacent state and that the law on the adjacent state would apply when not in conflict with the applicable federal law. As the Fifth Circuit in this case said, once Kimble's status as a seaman was established, he would still be entitled to the Jones Act benefits:

> "even if we assumed that Kimble received his injuries in the heart of Louisiana mainland, so long as he was acting at the time as a seaman in the service of his ship."

> * * * "here, Kimble's status as a seaman depended not on the location of the platforms at sea, but upon his assignment to, and responsibilities on, the tender, which was unquestionably a vessel."

Both the jury and the Fifth Circuit had a clear understanding and appreciation of the issues in this matter.

CONCLUSION

For the reasons stated it is respectfully submitted that this court should deny Petitioners' application for a writ of certiorari.

Respectfully submitted,

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CERTIFICATE

PARISH OF ORLEANS
STATE OF LOUISIANA

I, Donald V. Organ, counsel for Respondent, and a member of the bar of the United States Supreme Court, hereby affirm under oath that a copy of the foregoing opposition to petition for writs of certiorari has been served on the parties hereto by mail, in a properly addressed envelope, postage pre-paid as follows, to wit:

Clerk of United States Fifth Circuit
Court of Appeals
New Orleans, Louisiana

W. Ford Reese
Adams & Reese
847 N. B. C. Building
New Orleans, Louisiana 70112

DONALD V. ORGAN

Sworn to and subscribed before me this ____ day of January, 1970 at New Orleans, Louisiana.

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